

SUPREME COURT OF INDIA

Before :- S.P. Bharucha and V.N. Khare, JJ.

Civil Appeal No. 5037 of 1998 (Arising out of SLP(C) No. 563 of 1998). D/d. 6.10.1998

Management of Port Land Estate - Appellant

Versus

P. Suresh Babu - Respondents

JUDGMENT

S.P. Bharucha J. - Delay in filing the counter-affidavit is condoned.

2. Leave granted.

3. The order of the learned single Judge of the High Court of Karnataka on the writ petition filed by the first respondent-workman reads, so far as is relevant, thus :

"The misconduct alleged against the worker is that he has closed the line room allotted for the use of labourer as Reading Room and prevented the workers from using it. Though he was instructed by the Conductor Mr. T.K. Poovanna as also the Management to keep the Reading Room open, he has declined to keep it open. This is a serious lapse on the part of the worker for which a proper punishment can be imposed. The Management has, therefore, thought it fit to dismiss the worker. One cannot say that the Management is totally unjustified in doing so. But whatever be the circumstances, I feel it to be harsh. I do not think the extreme punishment of dismissal is just and proper in the instant case. May be the misconduct committed by the worker may be a serious lapse, but it does not warrant the extreme punishment of dismissal.

x x x x x x x x x x x x x x

In the result, the worker will be reinstated into service with backwages only from 17.1.1996, the date of award. The writ petition is disposed of as above."

The Division Bench, in the appeal filed by the present appellant, declined to interfere.

4. We are of the view that the Division Bench of the High Court was in error in not interfering and the learned single Judge was in error in holding that the punishment of dismissal was harsh after having acknowledged that he could not say that "the management is totally unjustified in doing so" and that there had been a serious lapse. The punishment that had been imposed by the appellant should not have been interfered with in the circumstances.

5. Learned counsel for the appellant has been fair to say that, regardless of the setting

aside of the orders aforementioned, the appellant would pay to the first respondent, as *ex-gratia* compensation, the sum of Rs. 30,000/-.

6. The appeal is allowed. The order under appeal is set aside. The writ petition filed by the first respondent is dismissed. The appellant shall pay to the first respondent *ex-gratia* compensation as aforesaid within a period of six weeks. No order as to costs.

Appeal allowed.